[COMMITTEE PRINT]

A SUMMARY: THE BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985 (P.L. 99-177)

COMMITTEE ON THE BUDGET
U.S. HOUSE OF REPRESENTATIVES

JANUARY 1986

Serial No. CP-7

Printed for the use of the Committee on the Budget

U.S. GOVERNMENT PRINTING OFFICE
57-111 O WASHINGTON : 1986

H262-3

COMMITTEE ON THE BUDGET

WILLIAM H. GRAY III, Pennsylvania, *Chairman*

JIM WRIGHT, Texas
W.G. (BILL) HEFNER, North Carolina
THOMAS J. DOWNEY, New York
MIKE LOWRY, Washington
BUTLER DERRICK, South Carolina
GEORGE MILLER, California
PAT WILLIAMS, Montana
HOWARD WOLPE, Michigan
MARTIN FROST, Texas
VIC FAZIO, California
MARTY RUSSO, Illinois
ED JENKINS, Georgia
MICHAEL D. BARNES, Maryland
MARVIN LEATH, Texas
CHARLES E. SCHUMER, New York
BARBARA BOXER, California
BUDDY MacKAY, Florida
JIM SLATTERY, Kansas
CHESTER G. ATKINS, Massachusetts

DELBERT L. LATTA, Ohio
JACK F. KEMP, New York
LYNN MARTIN, Illinois
BOBBI FIEDLER, California
WILLIS D. GRADISON, JR., Ohio
TOM LOEFFLER, Texas
CONNIE MACK, Florida
WILLIAM F. GOODLING, Pennsylvania
W. HENSON MOORE, Louisiana
DENNY SMITH, Oregon
VIN WEBER, Minnesota
HANK BROWN, Colorado
BEAU BOULTER, Texas

STEVEN L. PRUITT, *Executive Director*
MARTHA H. PHILLIPS, *Minority Staff Director*

The following summary of the Balanced Budget and Emergency Deficit Control Act of 1985 was prepared by the staff of the Committee on the Budget. Some interpretations of the law may not necessarily reflect the views of all of the members of the Committee. It should be noted that certain provisions of the law are ambiguous and may be subject to different interpretations by the parties charged with implementing the law or the courts of the United States. In these areas the Committee staff consulted with many of those involved in the drafting of the legislation in order to reflect a consensus view of the law's application.

I. How is Sequestration Triggered?

The Balanced Budget and Emergency Deficit Control Act of 1985 (referred to as the "Act") establishes maximum deficit amounts (MDA) for fiscal years 1986 through 1991 as follows:

Fiscal year:	*Billion*
1986	$171.9
1987	144.0
1988	108.0
1989	72.0
1990	36.0
1991	0

The Act requires the President to submit a budget which does not exceed the maximum deficit amount for the applicable fiscal year. Further, congressional budget resolutions must also be within the maximum deficit amount of the applicable fiscal year. (This prohibition is enforced by points of order in the House and Senate.)

If the deficit, estimated by CBO/OMB/GAO as described in Part II, exceeds the MDA by $10 billion ($0 in fiscal years 1986 and 1991) then a "sequestration" process is triggered for that fiscal year. It should be noted that (1) sequestration may only be triggered *once* per fiscal year and (2) any sequestration order issued remains in effect for that fiscal year only. The process must start all over again to determine whether a sequestration order would be issued in the next fiscal year.

The timetable for the sequestration process is as follows:

	Fiscal years 1987–1991	Fiscal year 1986
Initial Snapshot by CBO/OMB	Aug. 15	Jan. 10
Presidential Notification re: Military Personnel	NA	Jan. 10
Initial Joint CBO/OMB Sequestration Report	Aug. 20	Jan. 15
Initial GAO Sequestration Report	Aug. 25	Jan. 21
Initial Presidential Sequestration Order	Sept. 1	Feb. 1
Presidential Notification re: Defense Contracts	Sept. 5	Jan. 15
GAO Certifies Defense Contract Savings	Sept. 30	Feb. 15
Modifying Sequestration Order re: Defense Contracts	NA	(1)
Funds Deferred Pursuant to Order	Oct. 1	Feb. 1
Final CBO/OMB Snapshot	(2)	NA
Final Joint CBO/OMB Sequestration Report	Oct. 5	NA
Final GAO Sequestration Report	Oct. 10	NA
Final Presidential Sequestration Order	Oct. 15	NA
Funds Cancelled Pursuant to Order	Oct. 15	Mar. 1
GAO Compliance Report	Nov. 15	Apr. 1

[1] Before March.
[2] Before Oct. 5.

Note: NA means "not applicable."

On August 20,[1] the Directors of CBO and OMB issue a joint report to the Comptroller General (GAO) on the deficit for the coming fiscal year.

The report contains the following items for such fiscal year:

- The estimated levels of total outlays and total revenues, the amount of any excess deficit, and whether such excess is greater than $10 billion (zero in fiscal years 1986 and 1991);
- The estimated rate of real economic growth (for each quarter of such year, and for each of the last two quarters of the preceding year), and whether negative real economic growth for two or more consecutive quarters is part of such estimate.
- If the deficit is $10 billion over the MDA ($0 in fiscal years 1986 and 1991), then the base for which reductions (sequestrations) are to be made; by account for nondefense programs, and by account and by program, project, and activity (PPA) within each account for defense, and the amounts and percentages by which such accounts and PPAs must be reduced during such fiscal year to eliminate the excess.
- The amount of automatic spending increases (COLAs) which are scheduled to take effect in programs with such increases, the amount and percentage by which such increases are to be reduced, the amount of deficit excess eliminated by such reductions, and the percentage (if any) of such increases after the reductions.
- The amount of savings achieved in programs with special rules (see Part II).

Upon receiving the OMB/CBO report, the Comptroller General (GAO) shall review it and make his own determination of the deficit level and all the other sequestration calculations, with due regard for the OMB/CBO report. The Comptroller General shall issue a report to the President and Congress which sets forth the same items as in the OMB/CBO report.

The Comptroller General must also explain any differences between the contents of his report and the report of OMB/CBO.

On September 1, the President must issue any required sequestration order based upon the August GAO report.[2] This is called the "initial" order. It must eliminate the full amount of the excess deficit in strict accordance with the requirements of the Act, e.g., special rules, exempted programs, 50/50 defense/nondefense split. (See Part II for explanation of the calculation.)

The Act requires that the President's order provide for reductions as set forth in the GAO report, incorporate the provisions of such report and be consistent with such report.

Additionally, the President must transmit to Congress a message containing the same information as required in the CBO/OMB report, and specifying within each defense and non-defense account, for each program, project, or activity, or budget account activity, the base from which such sequestration is made and the amounts which are to be sequestered. The President may also submit such other supporting details as he deems appropriate. This

---

[1] January 15, 1986, for fiscal year 1986.
[2] February 1, 1986 for fiscal year 1986.

message is referred to all committees with jurisdiction over programs, projects, and activities affected by the order.

The President may also submit to Congress alternatives to the sequestration order. Their form is not defined and procedures for their consideration by Congress are not specified. It is assumed that the appropriate committees of jurisdiction would review any alternatives submitted.

A second snapshot of the deficit is made by OMB/CBO before they issue a revised report on October 5.[3] This revised report is reviewed by GAO which then issues its final report to the President on October 10. On October 15, the President must issue his final order modifying the initial order, as necessary, to reflect the revised GAO report.

Accordingly, if legislation is enacted which prevents the MDA level from being exceeded before the first snapshot of the deficit by OMB/CBO the sequestration process stops at that point.

The question arises as to how Congress can modify or totally avoid an initial sequestration order issued by the President. Legislation enacted between the two snapshots of the deficit (August 15 and October 5) which eliminates or reduces the excess deficit amount, results in an order being modified to reflect such action. Legislation must pass both Houses, be signed by the President, and if necessary, a veto must be overridden. (If the deficit *increases*, the order is adjusted as well.) However, if legislation is enacted *after* the second snapshot is taken by CBO/OMB, the order is not automatically modified. After that point, legislation must contain provisions which *specifically* modify or supercede the pending order.

The Act specifies procedures for the Senate to follow in response to a sequestration order. Basically, the Senate Budget Committee may initiate a "mini reconciliation" process by directing committees to reduce spending, increase revenues, or any combination thereof, to achieve the maximum deficit amount. These procedures are necessary to enable the Senate to respond quickly to an order by limiting debate and amendments which would not be limited under normal Senate procedures. Since the House has the ability to take legislation through the Committee on Rules, which can limit debate and amendments, there are no specific House procedures for responding to an order.

II. Sequestration

SNAPSHOT, BUDGET BASE, EXEMPTIONS, CALCULATIONS, BUDGETARY RESOURCES, IMPLEMENTATION, AND DEFENSE FLEXIBILITY

"Sequestration" is the automatic formula reduction of "budgetary resources" required by the Act. It occurs, once each fiscal year, if and only if the Directors of CBO and OMB project that the MDA will be exceeded by more than a specified cushion. The cushion is zero in fiscal 1986 and 1991, and $10 billion in fiscal 1987–1990.

The premise of the Act is that sequestration is a last resort; sequestration is not intended to be the preferred way to cut the deficit. Rather, the possibility of sequestration is intended to provide

[3] No procedure for a second look is applicable for fiscal year 1986.

the President and Congress with a further incentive to achieve deficit reduction through the regular budget process.

A. The Snapshot

Twice each fiscal year, in August and October, the Directors of CBO and OMB take a "snapshot" of (1) spending and tax laws, and (2) economic, demographic, and other estimating factors. Together, Federal laws and estimating factors are used to project total outlays, revenues, and deficit—the budget base.

The August snapshot is preliminary. Although the Directors make resulting budget and sequestration calculations (as do GAO and the President), spending is not canceled as a result of that snapshot; spending is merely deferred until the results of the October snapshot are official. Thus the August snapshot and calculations are primarily a warning. If the calculations show an excess deficit, Congress and the President may be spurred to move quickly on deficit-reduction bills. The Senate may choose to use the special procedures described in Part I.

The budget picture is frozen on the date of the final snapshot. The Directors do not account for any legislation enacted after the snapshot; they do not consider any new economic or demographic data obtained after the snapshot.

For fiscal 1986 there was only one snapshot, on January 10. There will be no further snapshots and calculations for fiscal 1986.

For fiscal 1987–1991, the final snapshot date occurs just before October 5 (i.e., just a few days after the start of the fiscal year).

B. The Budget Base

The Directors calculate the budget base by using the Federal laws and estimating factors that were frozen in place on the snapshot date. The calculations employ the following rules:

1. Only enacted law is considered. The Directors do not attempt to anticipate the outcome of legislation still working its way through Congress. Enacted entitlement law, including any required COLA, is projected at the full estimated cost.

2. The Directors assume the expiration of tax laws and direct spending laws (such as entitlements) that are scheduled to expire during the fiscal year in question.[4]

3. If a 12-month appropriation for a discretionary program has not been enacted, the Directors must use the dollar amount provided for the program in the prior fiscal year. Although a full-year continuing appropriation is counted, a temporary continuing appropriation is not considered for the purpose of the budget base.

The Act does not elaborate on the meaning of "prior appropriation." It is expected that the previous year's funding level would include regular appropriations, supplementals, rescissions, and (starting with fiscal 1987) sequestrations.

4. In estimating outlays, the Directors do not consider any deferrals reported pursuant to the Impoundment Control Act.

5. The Directors do not alter their economic or technical estimating factors between the August and October snapshots. Therefore,

---

[4] The Act specifies that, notwithstanding the general rule, excise taxes deposited into trust funds are not assumed to expire, and CCC crop price supports are not assumed to expire.

changes in the budget base result only from newly enacted law or newly promulgated regulations.

C. Exemptions

Some programs are completely or partially exempt from sequestration, and some outlays associated with nonexempt programs are excluded from the calculations. Before beginning the sequestration calculations, the Directors remove exempt outlays from the budget base, leaving the "sequestration base." All figures shown below are from the Directors report of January 15. The Comptroller General's report of January 21 made only minor changes.

There are four types of exemptions created by the Act:

1. *Completely Exempt Programs.* Other than their Federal administrative costs, the following programs are completely exempt. For fiscal 1986 these programs total more than $435 billion.

- Net Interest;
- Social Security retirement and disability;
- Railroad Retirement Tier I (the Social Security equivalent);
- Veterans Compensation and Pensions;
- State Unemployment Compensation;
- Earned Income Tax Credit;
- Selected "Low-Income" programs: AFDC, SSI, Food Stamps, Child Nutrition, WIC, and Medicaid;
- Federal power administrations: TVA, BPA, WAPA, SWAPA, SEAPA, and APA;
- Postal Service Fund (but not the Federal subsidy);
- Accounts paying claims against the U.S., including Claims, Judgments, and Relief Acts; Defense Claims; Payments to Copyright Owners; Eastern Indian Land Claims; Vietnam and USS Pueblo POW Claims; and Soldiers and Airmen's Home Claims;
- Constitutionally protected salaries: Compensation of the President, and Salaries of Article III Judges.
- Non-U.S. funds of three types: Foreign Military Sales Trust Fund; activities from private bequests, donations, or voluntary contributions; and appropriations for D.C. (but not the Federal subsidy);
- Payments from one Federal account to another, since these do not constitute Federal outlays;
- A few minor technical exemptions.

2. *Partially protected programs.* The following programs are subject to limited sequestration; although they may be cut, the cuts are limited as described below. For fiscal 1986 these programs total $135 billion.

- COLA programs, also known as Automatic Spending Increases (ASI), may have their COLAs reduced or frozen but their benefit base in protected, that is, the COLAs may not become negative. For 1986 their COLAs were frozen: on average, the lost COLAs would have been 3.12 percent. Nine-tenths of these savings came from Federal Civil Service and Military Retirement. The protected base for these programs totals almost $48 billion in 1986.
- Special Rule programs may be cut by specified, limited percentages or amounts.

Guaranteed Student Loans may be cut only by (1) increasing the student's origination fee (up-front premium) by one-half of one percentage point, and (2) decreasing the lender's "Special Allowance Factor" by four-tenths of one percentage point. These changes apply only for one year. They apply only to loans originated during the fiscal year but after the sequestration order.

Foster Care and Adoption Assistance payments to the States may be cut only to the extent that they would have increased in order to match benefit increases legislated by the States.

Five health programs may be cut by no more than one percent in fiscal 1986 and no more than two percent in fiscal 1987–1991, relative to whatever their costs otherwise would have been absent sequestration. The programs are Medicare,[5] Veterans Medical Care, Indian Health, Migrant Health, and Community Health. For fiscal 1986 this special rule effectively protects almost $83 billion.

- Insurance and Guaranteed Loan Programs may have their new activities subject to sequestration, but costs associated with insurance claims or with loan defaults are exempt. The Act identifies 46 such programs.[6] In general, these programs support themselves through premiums, so that their net Federal cost is near zero.

3. *Prior-year outlays from otherwise nonexempt programs.* Although these programs are subject to across-the-board sequestration, their prior-year outlays generally are not part of the calculations. Just about $100 billion in defense outlays, and a nearly identical amount in nondefense outlays, are thus excluded from the sequestration calculations. However, new funds for the programs in question are completely available for sequestration.

Specifically, for nondefense programs the Act removes from the calculations all outlays resulting from budgetary resources that were provided in prior fiscal years. Only new budgetary resources are sequesterable, and only the resulting "new" outlays are included in the calculations.

For defense programs the Act removes from the calculations all outlays resulting from obligated budgetary resources that were provided in prior fiscal years. However, unobligated balances of prior appropriations are subject to sequestration, so the outlays estimated to flow therefrom are part of the calculations.

4. *Offsetting receipts.* These receipts are nontax income of the U.S. deposited in the Treasury's General Fund, and are accounted as "negative spending." An example is the income generated by Outer Continental Shelf Rents and Royalties. The Act exempts such income from sequestration calculations, since sequestration is intended to cut spending, not to increase user fees or speed up auction schedules.

---

[5] Medicare cuts come only from a reduction in payments for covered services. Therefore, premiums and deductibles, program eligibility, and the types of services that are covered are not altered. For fiscal 1986, payments made after March 1 are reduced by one percent.

[6] In their January 15, sequestration report, the Directors agreed that the Act should have specified that interest payments to the Washington Metropolitan Area Transit Authority (WMATA) were in this category. However, the Act did not specifically do so, and the Directors did not agree whether such payments are exempt under its terms. On January 21 the Comptroller General ruled that the payments are exempt.

SEQUESTERABLE OUTLAYS: FISCAL 1986

	Total		Sequesterable
	Dollars	Percent	
(1) Completely exempt programs:			
Net Interest	137	13.7	0
Social Security	202	20.3	0
Other exempt programs	96	9.6	0
Subtotal	(435)	(43.6)	(0)
(2) Offsetting receipts	−50	−5.0	0
(3) Partially protected programs:			
COLA programs	49	4.9	1
"Special Rules" programs	87	8.7	([1])
Insurance/Guarantees (net)	−1	−0.1	([1])
Subtotal	(135)	(13.5)	(1)
(4) Completely sequesterable programs:			
Defense:			
"new" outlays	172	17.3	[2] 172 (109)
"prior" outlays	100	10.0	0
Nondefense:			
"new" outlays	105	10.5	[3] 105 (115)
"prior" outlays	100	10.0	0
Subtotal	(477)	47.8	(277)
Grand total	997	100.0	278

[1] Less than $500 million.

[2] As discussed under "Defense Flexibility," most Military Personnel accounts were protected in fiscal 1986.

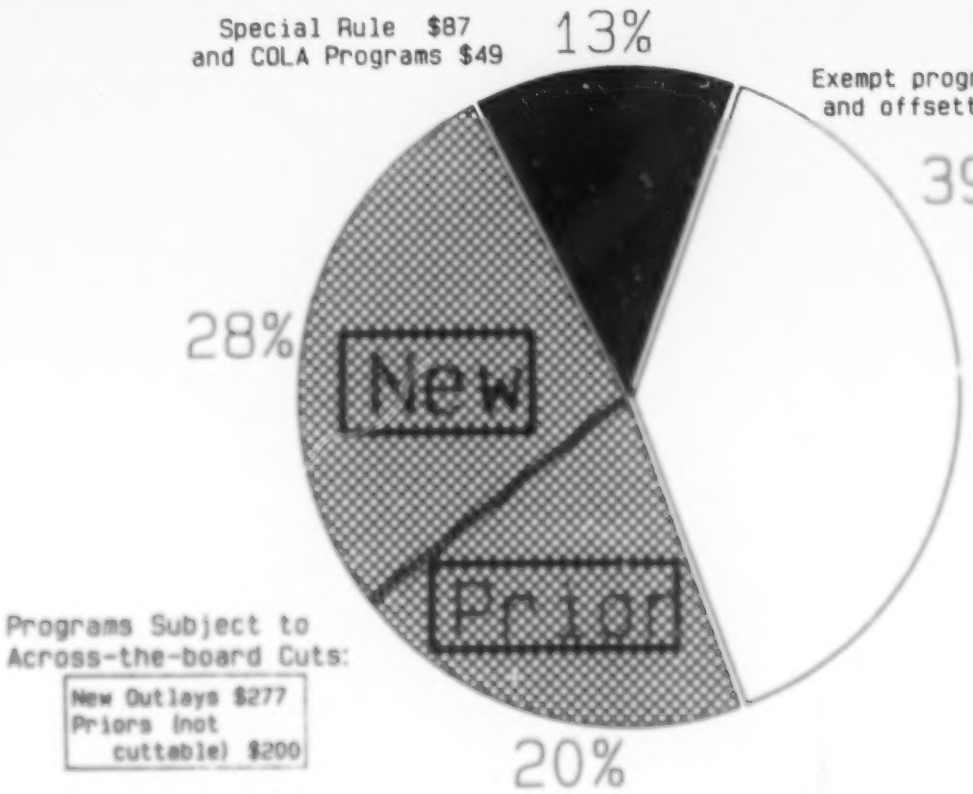
[3] The Act includes a special rule for the CCC farm price support program. In general, this program is subject to across-the-board sequestration, by the same percentage reduction that applies to all other nonexempt, non-COLA, non "special rule", nondefense programs. The Act specifies that each type of crop must be cut by the same percentage, and that the cuts apply to the crop year beginning after a sequestration order has gone into effect.

As with many other defense and nondefense programs, sequestration would produce some outlay savings in the first year and some in subsequent years. In fact, CBO estimates that $7.5 billion in fiscal 1987 savings will result from fiscal 1986 sequestration.

Unlike its treatment of other programs, however, the Act specifies that second-year CCC savings shall be accounted as though they occurred in the first year. Thus, $409 million in estimated fiscal 1987 outlay savings have been counted as though they would occur in fiscal 1986. Since they will not, the fiscal 1986 outlay savings in the Directors' estimate from sequestration is $11.3 billion rather than $11.7 billion. This summary will use the $11.7 billion figure.

For consistency, therefore, the fiscal 1987 CCC budget base of $9.5 billion (which produces the $409 million in fiscal 1987 savings) is shown as though it were part of the fiscal 1986 budget base. Thus, the actual fiscal 1986 nondefense budget base of $105.2 billion is shown here as $114.8 billion.

FISCAL YEAR 1986 OUTLAYS



Programs Subject to
Across-the-board Cuts:

New Outlays $277
Priors (not cuttable) $200

House Budget Committee
January 28, 1986

D. The calculations

The Directors calculate the reduction in outlays, and the sequestration of budgetary resources necessary to produce that reduction, by taking the steps listed below, in order. Where they do not agree on a common estimate, they are required to use the average.

1. The Directors calculate the excess deficit. They subtract the projected "budget base" deficit from the deficit target (the MDA). For fiscal 1986 they projected a budget base deficit of $220.5 billion. That projected deficit is $48.6 billion above the maximum deficit amount of $171.9 billion.

2. If the excess deficit is larger than the cushion, then (except in fiscal 1986) the entire excess deficit is eliminated. Thus the "required outlay reduction" equals the excess deficit. For fiscal 1986 and 1991 the cushion is zero; for fiscal 1987–1990 the cushion is $10 billion.

[NOTE: For fiscal 1986 only, sequestration is capped; only 7/12 of the excess deficit is eliminated, and in any case the outlay reduction may not exceed $11.7 billion.[7]]

3. Exempt outlays are removed from the calculations.

4. Retirement COLAs are frozen,[8] and the savings are credited against the required reduction.

5. The remaining required reduction, after subtracting the savings from freezing retirement COLAs, is divided equally between defense[9] and nondefense accounts. Each must achieve half the remaining outlay savings.

6. The defense outlay savings are achieved by cutting sequesterable budgetary resources across the board. That is, the Directors calculate a single percentage by which defense budgetary resources must be cut in order to achieve the outlay savings required from defense programs.

The Act also grants the President three types of flexibility that, if used, would change the across-the-board nature of the defense cuts, would change the amount of budgetary resources sequestered, and could possibly change the amount of outlay savings achieved. See the discussion of Defense Flexibility.

7. The nondefense outlay savings are achieved in four steps. First, the nonretirement COLAs are frozen.[10] For fiscal 1986, this step saved $45 million.

---

[7] For fiscal 1986, the excess deficit of $48.6 billion, after multiplying by 7/12, is $28.4 billion. That is substantially greater than the cap of $11.7 billion, so fiscal 1986 sequestration is governed by the $11.7 billion cap.

[8] The Act requires that the savings from freezing retirement and other COLAs must not be more than half of the total sequestration. Given recent inflation experience, it is unlikely that such savings would be more than $2 billion—in fiscal 1986 they are $1,039 million.

Because of the cushion, the minimum possible sequester in fiscal 1978–1990 is $10 billion. As noted, the fiscal 1986 sequester is $11.7 billion. Therefore, the only year in which a COLA freeze could save more than half of the required reduction would be fiscal 1991, and then only if the required reduction (the excess deficit) were just a few billion dollars.

[9] "Defense" is defined to mean the National Defense functional category except for Federal Emergency Management Administration (FEMA) accounts. This category includes amounts funded in the DOD and Military Construction appropriation bills, and the nuclear weapons accounts funded in the Energy—Water Development appropriation bill.

[10] As noted, the Act provides that total COLA savings may not be more than half of the excess deficit. There are three nonexempt, nonretirement COLAs: Vocational Rehabilitation basic state grants; Special Milk; and the National Wool Act.

Second, two "special rule" programs, Guaranteed Student Loans and Foster Care/Adoption Assistance, are cut the full amount allowed by the Act. For fiscal 1986 this step saved $15 million.

Third, the "special rule" health programs are cut by one percent (in fiscal 1986) or by two percent (in fiscal 1987-1991).[11] For fiscal 1986 this step saved $382 million.

Finally, whatever nondefense outlay savings are still required (after taking the previous steps) are achieved by cutting sequesterable budgetary resources across the board. That is, the Directors calculate a single percentage by which nondefense budgetary resources must be cut in order to achieve the remaining outlay savings required from nondefense programs.

FISCAL 1986 SEQUESTRATION CALCULATIONS: OUTLAY SAVINGS, IN MILLIONS

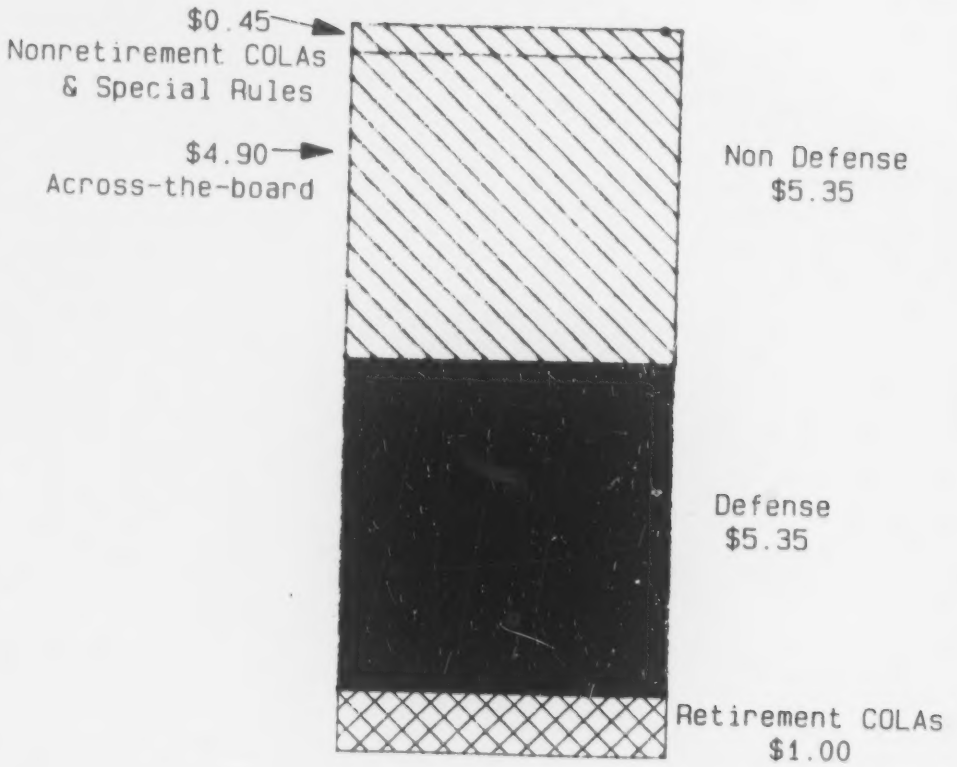
	Nondefense	Defense	Total
Required Savings			11,700
Retirement COLAs			994
Remaining savings	5,353	5,353	10,706
Nonretirement COLAs	45	0	45
GSL, Foster Care, Adoption Assistance	15	0	15
Health "special rule"	382	0	382
Remaining savings	4,912	5,353	10,265

This table shows the dollar amount of the fiscal 1986 required outlay savings, according to the Directors' report. It is critical to note, however, that the across-the-board sequestrations are of budgetary resources, not outlays. The Directors calculate how deeply (1) defense and (2) nondefense budgetary resources must be cut in order to produce the necessary outlay reductions.

[11] The Act provides that these health cuts must not save more than is needed to reach the nondefense savings target; if they would, then the percentage is reduced (to less than 2%) in order to meet but not exceed the savings target.

A 2 percent cut in the "special rule" health programs would save less than $2 billion. As noted previously, a COLA freeze saves about $1 billion. Therefore, sequestration would have to be less than $5 billion in order for the health reduction to be less than 2 percent. Because of the $10 billion cushion, sequestration can be that small only for fiscal 1991.

1986 SEQUESTRATION UNDER GRAMM-RUDMAN



In order to make these two calculations, the Directors must estimate three figures for each of the two program categories: (1) the base level of budgetary resources; (2) an estimate of outlays that would result from those budgetary resources in the coming fiscal year; and (3) the "remaining outlay savings" that are required to be achieved through sequestration.

Using nondefense programs in fiscal 1986 as an example, the base level of budgetary resources available for across-the-board sequestration is $244.1 billion. The level of fiscal 1986 outlays estimated to flow from those budgetary resources is $114.8 billion. (As explained in footnote 3 on p. 3, $9.5 billion of fiscal 1987 CCC payments are also included in these totals.) The budgetary resources that are not disbursed in 1986 will be spent in future years.

The relationship between budgetary resources and new (fiscal 1986) outlays is calculated account by account, based on historical spendout rates for each account. It is a cause-and-effect relationship: the $244.1 billion in budgetary resources is the sole cause of the $114.8 billion in estimated new (fiscal 1986) outlays. If Congress eliminated 100 percent of those budgetary resources, then it would have eliminated 100 percent of the new outlays. *Likewise, if sequestration eliminates 10 percent of the budgetary resources, then sequestration will necessarily eliminate 10 percent of the new outlays.* In other words, the percentage reduction required in budgetary resources is exactly the same as the percentage reduction required in sequesterable outlays.

Therefore, the Directors calculate the percentage reduction in sequesterable budgetary resources by dividing the required outlay reduction ($4.912 billion) by the resulting "sequesterable" outlays (114.762 billion).

FISCAL 1986 NONDEFENSE: ACROSS-THE-BOARD CUT

	Base	Amount cut	Percent cut
Budgetary resources	$244.130	$10.449	4.28
Resulting outlays	114.762	4.912	4.28

In applying the percent reduction to budgetary resources, the Directors chose to round to 4.3 percent, and therefore achieve slightly more savings than required.

The principle for calculating the defense cuts is exactly the same.

In general, the dollar amount of required across-the-board outlay reductions in defense and nondefense programs is very similar. (Without the special rule and nonretirement COLA programs, the dollar amounts would be identical.) Since the defense outlay base is significantly larger than the nondefense outlay base, the defense percentage will be significantly lower. This is shown best when a sequestration is very large, so that the effect of the special rules is minimal. For example, if fiscal 1986 sequestration had eliminated the full excess deficit of $48.6 billion, then the nondefense across-the-board reduction would have been 20.4 percent. The defense across-the-board reduction would have been 13.8 percent.

As discussed later, the Act grants the President some flexibility in applying the defense cuts. When used, as it was in fiscal 1986, the defense cuts are no longer across the board so the calculations may change substantially.

E. Budgetary Resources

Budgetary resources allow an agency's budget officer to incur financial obligations. Budgetary resources are the legal authority to sign binding service or procurement contracts, to hire personnel, to make grants, or to commit to any other payment required by law.

Budgetary resources are most commonly measured by new budget authority (usually called "BA"). Most new budget authority is provided in annual appropriation acts. The remainder is provided automatically by substantive law, and is called "permanent budget authority" or "permanent appropriations." But, for the purposes of the Act, budgetary resources go beyond new budget authority.

The Act treats defense programs differently from nondefense programs. For defense, the sequesterable budgetary resources are (1) new budget authority, and (2) unobligated balances of prior budget authority.

For nondefense programs, there are five different types of budgetary resources that are subject to sequestration.

(1) new *budget authority;*
(2) gross levels of new *direct loan* obligations;
(3) other *obligation limitations* (generally, limitations on programmatic or administrative obligations from trust or revolving funds);
(4) "spending authority defined in Sec. 410(c)(2) of the Congressional Budget Act" (commonly known as "direct spending" or "*backdoor spending*)"; and
(5) new *loan guarantee* commitments.

Note that *unobligated balances* are not listed as budgetary resources subject to sequestration. With regard to unobligated balances, three points are worth noting. First, direct loans, other obligations subject to limitation, and backdoor spending authority are frequently financed from unobligated balances of one type or another.[12] Therefore, to the extent that those three types of budgetary resources are reduced through sequestration, so are obligations from unobligated balances.

Second, the Directors have ruled that one variety of unobligated balance—offsetting collections from the public that are credited to appropriation or fund accounts—are also a type of backdoor spending authority and, therefore, are subject to sequestration.

Third, the Act subjects all Federal administrative expenses to sequestration, "notwithstanding any other provision of this title." The Directors agree that this language is all-inclusive. However, on January 21 the Comptroller General ruled that administrative expenses funded by unobligated balance of prior budget authority

[12] Unobligated balances may come from: Prior appropriations of budget authority carried over into the new fiscal year; offsetting collections from the public (such as loan repayments, fees, and premiums) or from other budget accounts; and recoveries (or deobligations) of funds obligated in prior years.

(and not the object of a limitation, or funded by unobligated balances from offsetting collections) are nonetheless not subject to sequestration.

Loan guarantee commitments are not considered to require budget authority or produce outlays, since they merely guarantee that one private party, a borrower, will repay a loan to another private party, a lender. However, if the borrower defaults the U.S. must bear the costs. Default payments are Federal outlays, but are exempt from sequestration.

Sequestration of loan guarantees reduces the government's contingent liability. In the long run, this would lead to lower default payments. Since most loan guarantee programs are self-financed (up-front premiums cover expected defaults), sequestration will have the shortrun effect of slightly reducing Federal income from premiums.

Programs with two types of budgetary resource are numerous. For example, the Federal-aid highway program receives new budget authority (in the form of contract authority) and has an obligation limitation. Many direct loan programs receive new budget authority (in the form of borrowing authority) though they are controlled by loan limitations. Some entitlements (a common form of backdoor spending) receive annual appropriations of budget authority in appropriation bills.

In general, if a program is controlled by both definite budget authority and another budgetary resource, then both budgetary resources are reduced through sequestration. If a program receives indefinite budget authority ("such amounts as may be necessary") but is controlled by a different budgetary resource, such as a direct loan limitation, then only the latter resource is directly reduced through sequestration. The amount of indefinite budget authority will automatically be reduced as a consequence, though not necessarily by the same amount or percentage.

F. Implementation: Federal Pay, "PPA's", Reprogramming, and Available Resources

Federal Pay. Sequestration does not alter pay rates set by Federal statute, nor affect the operation of the Pay Comparabilty Act. Therefore, the rate of pay received by a GS–9 or a second lieutenant is not altered by sequestration, nor is any scheduled pay raise affected. However, the funding level for such personnel costs is reduced through sequestration. As a result, sequestration may lead to a smaller Federal civilian and military workforce through attrition or RIFs, or may lead to furloughs.

Program, Project, or Activity (PPA). The Act requires that, in implementing sequestration, the President cut each "program, project, or activity" (PPA) within a budget account by the same percentage. There are single-purpose accounts (e.g. revenue sharing) as well as multi-purpose accounts. For example, the Budget Appendix lists eight "activities" within the Training and Employment Services account: Block Grant to States; Summer Youth Employment; Dislocated Worker Assistance; Native Americans; Migrant and Seasonal Farmworkers; Job Corps; Veterans Employment; and National Activities. The intent is that sequestration cut each PPA by the same percentage.

The term "program, project, and activity" does not have a statutory definition. Instead, the Act specifies that, for accounts funded through annual appropriations, the term is to be defined each year in appropriation bills (perhaps through earmarks) or in their accompanying reports.

For fiscal 1986, the statement of managers accompanying the final continuing appropriations contains the necessary definitions.[13] Those definitions of PPA range from very broad to very narrow. For example, the Legislative Branch PPA's are synonymous with each appropriation account, so that there is complete flexibility within each account. In contrast, for the Soil Conservation Service the definition of PPA includes individual flood prevention projects and individual operational watershed projects.

For defense accounts, the amounts cut from each PPA are specified in the Directors report, the GAO report, and the President's sequestration order. For nondefense accounts, the amounts cut from each PPA are not specified until the Presidential order and accompanying message are issued.

Reprogramming. The Act does not address, and apparently does not alter, the existing authority of the President to move funds from project to project within an appropriation account. This "reprogramming" authority is not limited by any statute, unless an appropriation or authorization law includes specific "earmarks." However, fairly specific procedures have developed over time for an agency to check with the House and Senate Appropriations Committees before it implements any significant reprogramming. It is likely that, after the application of strict, pro-rata sequestration, the agencies will suggest ways to adjust the results through reprogramming.

Available Resources. Sequestration cancels budgetary resources; it reduces amounts otherwise available by law on the date of the sequestration order. The amount otherwise available by law might not be the amount used in the sequestration calculations, for two reasons.

First, between the time of the snapshot and the sequestration date, a law might be enacted changing the amount of available resources. For example, in the budget base (computed October 5) a given account might have $100 million in budget authority and might be subject to a sequestration of $10 million or 10 percent. By the sequestration date (October 15) that account might, because of an intervening statute, have $115 million in budget authority. The Act does not specify whether, in such a case, the sequestration shall be the $10 million previously calculated or the 10 percent (now $11.5 million) previously calculated. At this time it appears that the dollar rather than the percent figure will govern.

Second, a temporary continuing appropriation may be in place on October 15. Since the budget base and calculations relied on the previous year's funding level, the amount in the calculations may differ from the amount in the continuing. Again, it is expected that the amount otherwise provided by the continuing will be reduced by the dollar amount specified in the calculations.

---

[13] H. Rept. 99-450, pp 338-345.

G. Defense Flexibility

The Act grants three types of flexibility to the President in applying sequestration to defense. (1) For fiscal 1986 only, the President may exempt Military Personnel from sequestration. (2) For fiscal year 1986 only, the President may make nonproportional cuts to PPAs within an individual defense budget account. (3) In all years, the President may, for a given defense PPA, reduce existing contracts in lieu of sequestering new budget authority or unobligated balances.

1. Exemption of Military Personnel. For fiscal 1986 only, the President may exempt all or part of Military Personnel expeditures from sequestration. The full amount of required outlay savings must still be achieved. Therefore, the defense cut must come entirely from a smaller base of sequesterable budgetary resources. Consequently, the percentage reduction to the remaining budgetary resources will be greater. For fiscal 1986, the President invoked this authority and exempted 93 percent of Military Personnel amounts from sequestration.

FISCAL 1986 DEFENSE: ACROSS-THE-BOARD CUT

	Base	Amount cut	Percent cut
Budgetary resources	$345.4	$10.7	3.1
Resulting outlays	172.4	[1] 5.4	3.1

[1] Required outlay reduction of $5,353 million.

FISCAL 1986 DEFENSE: MOST MILITARY PERSONNEL EXEMPT

	Base	Amount cut	Percent cut
Budgetary resources	$208.7	$13.8	4.9
Resulting outlays	109.3	[1] 5.4	4.9

[1] Required outlay reduction of $5,353 million.

Note that the use of this flexibility in 1986 shifts the defense cuts out of Military Personnel and into all other accounts, such as procurement. Since the savings must come from budget accounts with slower spendout rates, more total budgetary resources are sequestered in order to achieve the same outlay reduction.

2. Flexibility Among Defense PPAs. For fiscal 1986 only, the President is allowed to sequester as little as zero or as much as twice the percentage from any PPA. In other words, each defense PPA could be cut by anywhere from zero to 9.8 percent. There are three restrictions on the use of this authority:

(a) The total amount of budgetary resources sequestered from each budget account must still meet the required cut of 4.9 percent. Therefore, this flexibility moves funds from PPA to PPA within an account, but does not move funds between accounts.[14]

[14] Because this flexibility requires the President to achieve the specified reduction in budgetary resources, it is possible that the use of this authority will result in an outlay reduction that differs from what would otherwise be required. In practice, the use of this flexibility in 1986 did not change the estimated outlay savings.

(b) This flexibility may not result in base closures.

(c) This flexibility may not cut a PPA by more than the standard rate (4.9 percent) if that PPA is a "special interest" item (i.e., if the PPA was funded 10 percent above the administration's request).

The Act requires the President to show how this flexibility will be used when he makes his sequestration report on February 1. He chose to provide the Directors with this information in advance of their January 15 report, and they incorporated his decisions into their report. The President used this flexibility primarily to protect Star Wars research.[15]

3. Authority to Sequester Obligated Balances.—For all years, the President has the authority to achieve sequestration within a given PPA by modifying or canceling existing contracts. The savings from contract modification would replace, in whole or in part, the savings otherwise required by sequestration. There are four conditions on the use of this flexibility:

(a) The Directors, Congress, and the GAO must be notified of the specific contract modifications in advance of sequestration, and must be provided with an estimate of the budgetary resources to be canceled and the outlays to be saved.

(b) GAO must certify that the estimates are "reasonable."

(c) The combination of sequestration and contract modification within a PPA must produce the outlay savings otherwise required. If contract modification would reduce outlays in the PPA by less than the required sequestration amount, then the shortfall must be made up through sequestration from the PPA, using the PPA's spendout rate as calculated by the Directors and GAO.

(d) If contract modification would reduce outlays in the PPA by more than the required sequestration amount, then the excess savings are not credited to any other PPA.

The President did not choose to use this flexibility in fiscal 1986. It should be noted that this flexibility is conditional upon meeting the required outlay savings. If the "savings rate" from modifying a contract is different from the first-year spendout rate for that PPA, the use of this flexibility would result in a different reduction in budgetary resources than otherwise required. Reductions in a procurement item that is already being delivered might result in a savings rate of one-to-one, so that budget authority reductions would be significantly less than otherwise required.

It should also be noted that the general authority to modify or cancel defense contracts exists independent of the Act. Therefore, if the President chooses to modify contracts outside of the sequestration process, he would be able to free up (deobligate) budgetary resources and make them available for other purposes. Combined with general reprogramming authority, those freed-up resources could be used to supplement funding for other PPAs within the same budget account. Thus, the flexibility granted in the Act is more restrictive than general authority that the President still retains.

---

[15] The President also used this flexibility to protect over $2 billion in budgetary resources that were dedicated to 14 R&D or procurement "firm fixed price" contracts and to 5 multiyear contracts.

III. Suspension by Joint Resolution in Case of Recession

The Act establishes a procedure for suspending certain of its provisions enforcing the MDA in the event of a recession. The Director of the Congressional Budget Office is required to notify Congress at any time if, during the quarter that notification is given, the quarter preceding notification, and the four quarters following such notification, CBO or OMB has determined that real economic growth is projected to be less than zero in any two consecutive quarters.

The Director must also notify Congress if the Department of Commerce's preliminary reports or revisions of actual real economic growth indicate that the rate of real economic growth for the most recent reported quarter and the immediate preceding quarter is less than one percent.

Upon such notification, the Majority Leader of each House shall introduce a joint resolution declaring that the economic conditions specified are met and suspending the relevant provisions of the legislation for the remainder of the current fiscal year and for the following fiscal year. This provides an opportunity for the Congress to respond to the recession with a budget program outside the constraints of the Act for the recession and early recovery period. However, it is important to note that such a suspension does not modify the maximum deficit amounts and the timeframe for achieving a balanced budget in subsequent fiscal years.

Provisions Suspended

The provisions of the Act which are suspended by the joint resolution are as follows:

1. The maximum deficit amount for the current fiscal year and the next fiscal year as it applies to Congressional budget resolutions and the President's budget submissions;
2. Points of order for the *current* fiscal year enforcing spending and revenue levels, and the maximum deficit amount in the Senate, established in the budget resolution for such year;
3. Points of order for the *next* fiscal year enforcing spending and revenue levels established in the budget resolution for such fiscal year, except that if a budget resolution for such year has not been agreed to before the introduction of the joint resolution, then these points of order will not be suspended. The points of order in the Senate for enforcing the maximum deficit level for the next fiscal year is suspended regardless of the status of the budget resolution for such fiscal year.
4. The issuance of any joint report by CBO and OMB and any report of the Comptroller General reporting excess deficits, the issuance of any initial or final sequestration order by the President, and the operation of any initial sequestration order. However, a final sequestration order issued prior to enactment of the joint resolution is not suspended.

Form of Joint Resolution

The form of the joint resolution is prescribed in the Act. The joint resolution introduced pursuant to this procedure is referred to the Committees on the Budget of both Houses. The joint resolution is to be reported by the Budget Committee to its House, without

amendment, within five days after introduction. If the committee fails to report the joint resolution within the five-day period, it shall be automatically discharged from further consideration and the resolution will be placed on the appropriate calendar.

A vote on final passage of a joint resolution shall be taken within five days after it was reported or discharged. No amendment to a joint resolution is in order in either House of Congress.

When the joint resolution is agreed to, the Clerk of the House or the Secretary of the Senate engrosses, certifies, and transmits the joint resolution to the other House of Congress as soon as practicable. Expedited procedures for the consideration of the joint resolution are set forth for both the House and Senate.

IV. Judicial Review

The Act authorizes expedited judicial review of constitutional questions raised by a Member of Congress or any other adversely affected person. Legal action may be brought by a Member of Congress in the United States District Court for the District of Columbia on the grounds that any sequestration order that might be issued violates the Constitution or that the Presidential sequestration order does not comply with requirements of the Act. The measure specifically provides that such an action will be heard by a three-judge panel of the U.S. District Court for the District of Columbia, and authorizes an immediate appeal to the U.S. Supreme Court.

A case challenging the constitutionality of the Act is pending before a three-judge panel of the United States District Court for the District of Columbia (see *Synar* v. *United States*, Civ. Action No. 83-3945). A speedy decision by this panel is anticipated which then could be immediately appealed to the Supreme Court.

Any order of the United States District Court for the District of Columbia which is issued pursuant to this section of the legislation is reviewable by appeal directly to the United States Supreme Court. An appeal is taken by filing a notice of appeal within 10 days after an order is entered; the jurisdictional statement must be filed within 30 days after an order is entered. A stay of an order issued pursuant to an action brought under this section cannot be issued by a single Justice of the Supreme Court. The United States District Court for the District of Columbia and the United States Supreme Court are required to advance on the docket and to expedite the disposition of matters brought under the legislation.

If a court of competent jurisdiction finally determines that an order issued by the President under the Act for any fiscal year does not comply with the sequestration procedures, the President must, within 20 days after such a determination is made, revise the order in accordance with the judicial determination. If the Presidential order does not comply with the sequestration procedures on the claim or defense that the constitutional powers of the President prevent such sequestration and such claim or defense is finally determined by the United States Supreme Court to be valid, then the entire order for such fiscal year is null and void.

An order by a court granting declaratory or injunctive relief from a Presidential sequestration order, including relief permitting

or requiring expenditure of sequestered funds, does not take effect during the pendency of the action or an appeal until the court has entered its final order disposing of the action.

Alternative Procedures for the Joint Reports of the Directors—"Fall-back" Procedure

If any of the reporting procedures required of the Directors of the OMB, the CBO, and the GAO under the Act are invalidated by the Court, then the CBO/OMB reports are transmitted to a Temporary Joint Committee on Deficit Reduction rather than to GAO, and GAO has no reporting role. The Joint Committee is composed of the entire membership of the Budget Committees of the House of Representatives and the Senate. The chairmen of the House and Senate Budget Committees act as cochairman of the Joint Committee. Actions taken by the Joint Committee are determined by the majority vote of the Members representing each House.

The purposes of the Joint Committee are to receive the CBO/OMB reports and to report a joint resolution setting forth the contents of such reports. A joint resolution should be reported to the House of Representatives and the Senate within five days after receipt of such a report. The provisions pertaining to consideration of a joint resolution in the event of a recession also apply to consideration of a joint resolution reported under this alternative procedure in the House and Senate, except that debate in each House shall be limited to two hours. Upon enactment, the joint resolution is deemed to be the GAO report otherwise required by the Act. Enactment of this joint resolution would trigger the sequestration process.

V. Amendments to the Congressional Budget Act

In addition to establishing a new procedure, "sequestration," as part of the Executive and Congressional budget processes, the Act also substantially amended the existing budget process. Most of the reforms codify congressional budget practices that have evolved since the original Congressional Budget Act was adopted in 1974. However, some are designed to enforce the maximum deficit amounts set forth in the Budget Act.

As noted earlier, the Act provides that a budget resolution cannot contain a deficit level in excess of the MDA for the applicable fiscal years. This prohibition applies to the committee-reported budget resolution, any amendments thereto, or conference report thereon. In the House, three-fifths of Members present and voting are required to waive this point of order against *a conference report* on a budget resolution. This is the only super-majority waiver requirement created by the Act applicable in the House of Representatives.

The revenues and disbursements of the Social Security program are included in the calculation of the deficit for purposes of the congressional budget resolution, the President's budget, and the excess deficit. For all other purposes Social Security is considered off-budget. A new point of order is established which prohibits any changes to the Social Security program to be included in a reconcil-

iation bill pursuant to a budget resolution (this prohibition also applies to a Senate-originated response to sequestration).

The Budget Act is amended to establish spending controls at the subcommittee or program level. Legislation is subject to a point of order if it exceeds the appropriate committee's section 302(b) subdivision of new discretionary budget authority, new entitlement authority or credit authority. (In the Senate the point of order is based upon budget authority and outlays.) Under current law this subdivision is not binding.

Other amendments to the Budget Act codify existing congressional practices. For example, the Budget Act is amended to require adoption of only one annual budget resolution (although it may be revised at any time). The content of the resolution is expanded to include advisory budgetary levels for the two succeeding fiscal years, and reconciliation instructions for three fiscal years. Section 302(a) of the Budget Act is amended to reflect how the House and Senate Budget Committees technically allocate the spending authority in the budget resolution to the committees of jurisdiction. In the House, a committee is "held harmless" from certain points of order if it is within its section 302(a) total allocation of new discretionary budget authority and new entitlement authority.

The scope of the budget process is expanded to establish binding levels on credit authority, to require new credit authority to be subject to the appropriations process, and to define new types of "backdoor" spending authority.

Finally, the timetable for the budget process is accelerated. In addition to the timetable below, House rules are amended to require early organization of the House.

CONGRESSIONAL BUDGET PROCESS TIMETABLE

On or before:	
First Monday after January 3 [1]	President submits his budget.
February 15	Congressional Budget Office submits report to Budget Committees.
February 25	Committees submit views and estimates to Budget Committee.
April 1	Senate Budget Committee reports concurrent resolution on the budget.
April 15	Congress completes action on concurrent resolution on the budget.
May 15	Annual appropriation bills may be considered in the House.
June 10	House Appropriations Committee reports last annual appropriation bill.
June 15	Congress completes action on reconciliation legislation.
June 30	House completes action on annual appropriation bills.
Before July recess	House must complete action on all regular appropriation bills and reconciliation legislation before it can consider an adjournment resolution for more than 3 calendar days.
October 1	Fiscal year begins.

[1] Feb. 5 for FY 1987 budget submission.

○